

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION**

**TANNER HIRSCHFELD;
NATALIA MARSHALL**

Plaintiffs,

v.

**THE BUREAU OF ALCOHOL,
TOBACCO, FIREARMS, AND
EXPLOSIVES, et al.**

Case No. 3:18-CV-00103

Defendants

**PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS AND
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

NOW COME, the Plaintiffs, by counsel and hereby oppose the Defendants' Motion to Dismiss and pursuant to Fed. R. Civ. P. 56 hereby move this Court to enter summary judgment for Plaintiffs.

In accordance with this Court's Order of April 25, 2019, this Response in Opposition and Plaintiffs' Motion is accompanied by a single brief setting forth the argument and authorities on which Plaintiffs' rely in opposition to Defendants' Motion and in support of their motion. Plaintiffs respectfully request oral argument of their motion for summary judgment. This case raises important issues under the Second Amendment and the Fifth Amendment, and oral argument would assist the court in adjudicating the issues raised in the briefing.

SUMMARY

Plaintiffs move this Court for summary judgment on their claims that 18 U.S.C. §§ 922(b)(1) & (c), and any derivative regulations, violate the Second Amendment and the Due Process Clause of the Fifth Amendment to the United States Constitution.

Summary judgment is appropriate when “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”

Fed. R. Civ. P. 56. That standard is met here.

As we explain in our brief, by prohibiting federally licensed firearms dealers from selling handguns to 18- to 20-year-olds, these laws infringe upon 18- to 20-year-olds’ Second Amendment rights under the framework established by *District of Columbia v. Heller*, 554 U.S. 570 (2008). And by creating without sufficient justification a classification that burdens 18- to 20-year-olds’ fundamental right to keep and bear arms, these laws violate the equal protection component of the Fifth Amendment’s Due Process Clause.

Because Plaintiffs’ claims are meritorious, and because, as set forth in the accompanying brief, Plaintiffs have standing to maintain this action, Defendants’ Motion to Dismiss must be denied.

Respectfully submitted,

/s/ Elliott M. Harding

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CERTIFICATE OF SERVICE

On May 10, 2019, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Western District of Virginia, using the electronic case filing system of the court. I hereby certify that I have served all counsel of record electronically or by another manner authorized by Federal rule of Civil Procedure 5 (b)(2).

Respectfully submitted,

/s/ Elliott M. Harding

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